

**APPEAL BY LONDON & EDINBURGH PENSION SCHEME LLP AGAINST THE DECISION OF THE COUNCIL TO REFUSE FULL PLANNING PERMISSION FOR THE ERECTION OF THREE DWELLINGS AT OFFLEY ARMS HOTEL, POOLSIDE, MADELEY**

<b><u>Application Number</u></b>	<b>16/00594/FUL</b>
<b><u>Recommendation</u></b>	<b>Approval</b>
<b><u>LPA's Decision</u></b>	<b>Refused by Planning Committee 10<sup>th</sup> November 2016</b>
<b><u>Appeal Decision</u></b>	<b>Appeal allowed and planning permission granted</b>
<b><u>Costs Decision</u></b>	<b>Application for a full award of costs against the Council - allowed</b>
<b><u>Date of Appeal and Costs Decisions</u></b>	<b>7<sup>th</sup> June 2017</b>

**The appeal decision**

The full text of the appeal decision is available to view via the following link  
<http://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/16/00594/FUL>

The Inspector concluded that the main issue in this case is the effect on highway safety, having particular regard to the vehicular access and the efficient operation of the highway network in the vicinity of the site.

In allowing the appeal, the Inspector made the following comments:

*Highway Safety*

- The Offley Arms is located within Madeley, relatively close to the village centre and within walking distance of a large proportion of its residential community. Furthermore, there are public transport links close by which provide connections to the nearby towns and settlements. Overall, it was concluded that the site lies in a sustainable location.
- Saved Policy T16 of the Newcastle-Under-Lyme Local Plan, (Local Plan) 2003 advises that development which provides significantly less parking than the maximum specified levels will not be permitted if this would create or aggravate a local on street parking or traffic problem. The Local Plan however predates the National Planning Policy Framework (the Framework) which makes it clear that local planning authorities should only impose local parking standards for residential and non-residential development where there is clear and compelling justification that it is necessary to manage their local road network.
- Poolside is a classified road and in the vicinity of the site on-street parking is unrestricted. However, the appeal site does not lie within a dense residential or commercial area where there is a high competition for on-street parking.
- The maximum level of car parking required for The Offley Arms Hotel, based on levels specified in the Local Plan, would be 30 spaces. The existing car park provides 35 spaces, and as a consequence of the appeal proposal the number of spaces would be reduced to 24 which would not be significantly below the maximum requirement. Furthermore, in support of the application a car parking survey was undertaken to show the extent to which the existing car park is used. Over the two week period in which it was surveyed the maximum number of cars on the car park at any one time was nine. The Council do not appear to dispute the results of this study or its methodology, and the Inspector noted that the Highway Authority also did not raise any objections to the proposal. Moreover, no substantive evidence was provided to illustrate that there is a particular issue with on-street parking in the

vicinity of the site, or to demonstrate that on-street parking causes congestion in the area.

- The car parking survey undertaken by a neighbour over a weekend period has been considered and although on one of those days 31 spaces in the car park were utilised, on the remaining days less than 24 spaces were in use. The Inspector was not persuaded that the 24 spaces that would be retained for the public house and restaurant would not be sufficient to meet the needs of its customers. Even if the proposal did result in increased competition for on-street parking she was not persuaded that this could not be accommodated on Poolside. Whilst third party evidence suggests that private accesses have been obstructed in the past, this is likely to have been caused by inappropriate parking. Moreover, she was not persuaded that the existing level of, or an increased demand for on-street parking is, or would be, detrimental to highway safety or the safety of pedestrians.
- Having regard to the paragraph 39 of the Framework, the sustainable location of the appeal site and the characteristics of Poolside the Inspector concluded that in this case it is appropriate to apply flexibility to the Council's Local Plan car parking standards.
- The appeal proposal would not alter the existing vehicular access arrangement which would continue to serve the car park and the proposed dwellings.
- The Inspector was not provided with any evidence that would suggest that the existing access is unsafe for use by vehicles or pedestrians and was satisfied that the additional vehicles movements associated with the proposed dwellings would not prevent it from continuing to operate as a safe and suitable access to the site.
- The appeal proposals would not have a harmful effect on highway safety, having particular regard to the vehicular access and the efficient operation of the highway network in the vicinity of the site. The Inspector found no conflict with the development plan, in particular in respect of Policy T16 of the Local Plan which seeks to ensure that new development, amongst other things, would not create or aggravate a local on street parking or traffic problem. She also found no conflict with the Framework which seeks to ensure that new development provides a safe and suitable access to the site for all people.

### **The Costs Decision**

In allowing a full award of costs against the Council, the Inspector made the following comments:

- Planning Practice Guidance advises that irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
- The appellant submits that the Council has acted unreasonably in refusing the application against the advice of its professional officers and consultees without good reason. Taking into account the development plan, national planning policy and the sustainable location of the site the development should have clearly been permitted.
- Paragraph 049 of Planning Practice Guidance (PPG) advises that Local Planning Authority's may be at risk of a substantive award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. It further advises that they are at risk of an award of costs if they fail to substantiate each reason for refusal on appeal.
- In this case the Inspector noted the recommendation of the Council's Officer and considered it to be significant that the Council refused planning permission against the Officer's advice and the lack of objection from the Highway Authority. Whilst planning authorities are not bound to accept the recommendations of their officers, if such advice is not followed the Council will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so they are at risk of an award of costs.

- Although the Council defended their decision in their statement and submitted third party objections, they have not produced any realistic or specific evidence to support their reason for refusal. They have not provided any evidence to counter the evidence and arguments put forward by the appellant or the Highway Authority's advice. Instead the Council have relied on the maximum standards set out in Policy T16 and imposed them without taking account of the flexibility embedded in them and more recent advice in the Framework.
- Given the lack of evidence, the Inspector concluded that the Council's case was vague, based on inaccurate assertions about the impact of the proposed development, and not supported by any objective analysis. Therefore, having had regard to the provisions of the development plan, national planning policy and other material considerations the development should have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
- The Inspector found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, had been demonstrated and that a full award of costs is justified.

#### **Your Officer's comments**

It is clear from the appeal and costs decisions that the Inspector found that there was a lack of evidence and objective analysis to support the decision of the LPA to refuse the application contrary to the advice of the Highway Authority and its own officers whilst the appellant did provide evidence and argument. With no evidence to substantiate the decision, it was concluded that the Council had acted unreasonably.